



Tennessee Department of Revenue
Intangible Expense - Application for Approval to Deduct
Form IE-A

Please submit to:
 TN Department of Revenue
 ATTN: Intangible Expense
 P.O. Box 190644
 Nashville, TN 37219-0644 or to
Intangible.Expense@tn.gov

Taxpayer Name: _____ FEIN: _____
 Intangible expense(s): _____ Federal form to be filed: _____
 Name of affiliate in intangible transaction: _____ FEIN: _____
 Affiliate's State/Country of incorporation or formation: _____ Date: _____

If such expenses are paid to more than one affiliate, either submit a separate application for the expenses paid to each affiliate or attach schedules to this form setting forth the information requested for each other affiliate.

1. List the type of "intangible property" for which the expense is incurred and provide the intangible asset's cost value as reported on the affiliate's balance sheet for the prior tax year or current tax year, or the fair market value, if available, and check the appropriate box

Type of Intangible Property	Asset Value (Cost/FMV)	COST	FMV
		<input type="checkbox"/>	<input type="checkbox"/>

2. Does the affiliate use the proceeds from the expense transaction: (check all that apply)

- To pay dividends To loan back to a member of the affiliated group
 Directly in affiliate's business operations To invest in public securities
 Other: _____

2a. If the affiliate loans the proceeds back to a member of the affiliated group, attach evidence showing that the loan is being or has been repaid. Include the amount of interest earned annually.

3. When the affiliate has to support, legally defend, or authorize use of "intangible property," does it use:

- Its own employees Employees of an affiliated group member Contract labor
 Outside professional legal counsel Other: _____

3a. Provide a detailed explanation of how the affiliate supports, legally defends, and/or authorizes use of "intangible property."

4. Attach the following information:

- a) Complete copy of the affiliate's pro forma federal income tax return for prior tax year or current tax year, if available.
 b) To the extent known by the taxpayer, provide a list of the names and FEIN of other entities to which you are affiliated and subject to tax in TN that are also paying, accruing, or incurring intangible expenses to the affiliate.
 c) Description of the business activity of the affiliate to whom the expense is paid.
 d) List of the location(s) where the principal business activities of the affiliate take place. Specify the type of activity by location, and include the total number of full-time employees of affiliate.
 e) If the affiliate to whom the expense is paid has less than ten (10) employees, provide detailed information concerning these employee(s), including their names, titles, job descriptions, and work addresses. Describe key employees' day-to-day activities and disclose if they also work for others.
 f) Detailed explanation of the means by which the intangible asset(s) were transferred to the affiliate, e.g., by the payment of cash, by journal entry, etc. Provide a copy of the transfer document if applicable.
 g) Detailed explanation of the method used to measure or determine the intangible expense, including schedules showing the calculation of the amount. Include any relevant documents evidencing independent examinations, studies, and/or analyses upon which you rely.
 h) Provide documentation showing actual payments of the expense. If the affiliate loans the proceeds back to the taxpayer, provide the details regarding this loan.
 i) Provide any other information that taxpayer deems relevant to demonstrate affiliate's business purpose.

POWER OF ATTORNEY Check YES if this taxpayer's signature certifies that this tax preparer has the authority to execute this form on behalf of the taxpayer and is authorized to receive and inspect confidential tax information and to perform any and all acts relating to respective tax matters. <input type="checkbox"/> YES	I certify, under penalty of perjury, that the information provided in and with this application is true and correct to the best of my knowledge and understanding.		
	_____	_____	_____
	Signature of Taxpayer, Officer or Representative	Title	Date
	_____	_____	_____
	Tax Preparer's Signature	Preparer's PTIN	Date

INSTRUCTIONS FOR FORM IE-A

OFFICE USE ONLY ►

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Intangible Expense – Application for Approval to Deduct

When to complete Form IE-A

This form should be completed by any taxpayer that is applying to deduct an intangible expense from its net earnings or losses on Schedule J of the franchise and excise tax return and that does not meet one of the exceptions – or “safe harbors” – listed in Tenn. Code Ann. § 67-4-2006(b)(2)(N)(i)(a)-(c).¹

The application should be filed at least sixty (60) days prior to the original or extended due date of the taxpayer’s franchise, excise tax return. All information requested by this application must be attached. The information requested is not all inclusive, and taxpayer may be asked to submit additional documentation or clarification based on their specific facts and circumstances. Failure to submit an application will result in the disallowance of the intangible expense deduction. Failure to submit all requested information may result in the application being denied.

Definitions

"Intangible expense" means an expense related to, or in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property, to the extent such amounts are allowed or allowable as deductions or costs in determining federal taxable income on a separate entity basis. "Intangible expense" also means interest expenses directly or indirectly allowed as deductions or costs in determining federal taxable income on a separate entity basis to the extent such interest expenses are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, license, or any other disposition of intangible property.

"Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, licenses, research, formulas, designs, patterns, processes, formats, and similar types of intangible assets;

Add-back provision: Intangible expenses paid to an affiliated business entity must be added to a taxpayer's net earnings or losses on Schedule J, Line 2. Failure to make this add-back on the initially-filed return may subject the taxpayer to a 50% negligence penalty. See Tenn. Code Ann. §§ 67-4-2006(b)(1)(K) and 67-1-804(b)(2).

Deduction provision: Intangible expenses may be subsequently deducted from net earnings or losses provided it is shown by this application that the intangible expense, or portion thereof, that is paid, accrued, or incurred in connection with a transaction with one (1) or more affiliates did not have as its principal purpose the avoidance of the Tennessee excise tax. The commissioner's review of the taxpayer's application shall include the considerations outlined in Tenn. Code Ann. § 67-4-2014(c). Taxpayer should retain proper documentation to support any deduction taken on their return.

Instructions for Completing this Application

- Complete and submit this form at least sixty (60) days prior to the original or extended due date of the return;
- Only include intangible expense deductions that do not meet one of the exceptions or safe harbors¹;
- Complete the responses to questions 1-3A. Check whichever boxes are applicable to the transaction; and
- In responding to Question 4, please check the box, and submit the requested explanations and documents with the original application in one of the following formats: A) Paper Copies via US Mail, B) Electronic copies (excel, word, pdf) on a CD, or C) electronic submission to Intangible.Expense@tn.gov.
- Any questions regarding the completion and submission of this application should be directed to the Department’s Audit Division at (615) 741-8499.

Approval of application: If the Department approves the intangible expense deduction, or a portion thereof, such determination shall remain in effect so long as the taxpayer completes an annual certification that the facts and circumstances surrounding the transaction remain substantially unchanged. This certification is included on Schedule J of the franchise, excise tax return. See tax return instructions. The Department is authorized to require that the taxpayer reapply for approval to take the deduction beginning no sooner than five (5) years following the taxpayer's most recent approved application.

Instructions for Deducting Approved Intangible Expenses

- Add back all affiliated intangible expenses on Schedule J, line 2, of the return;
- Take the intangible expense deduction on Schedule J, Line 25A, of the return only if the application has been filed;
- Check the appropriate box on the Sch. J, Line 25A, deduction line, to indicate the deduction is based on Form IE-A – Failure to check the box on Schedule J will prevent the deduction amount from being processed;

Denial of application: If the Department denies the deduction, or a portion thereof, and the taxpayer nevertheless deducts the disallowed intangible expense, the Department will assess the taxpayer any applicable tax, interest, and penalty resulting from the disallowance of such deduction. The taxpayer may contest any such assessment according to remedies found at Tenn. Code Ann. § 67-1-1801, *et seq.*

Determination notification: The Department will notify the taxpayer by letter regarding its approval or denial of this application and the associated intangible expense deduction(s). If any portion of the intangible expense is approved for the deduction, the taxpayer should check the “Approved” box on Schedule J and enter the approved amount on its current and subsequent tax returns, as applicable.

If the application is submitted to the Department at least sixty (60) days before the original or extended due date of the return and the Department has neither approved nor denied the application by the due date of the return, no penalty shall be assessed based on any disallowance of the deduction for intangible expenses, and no interest shall accrue on any such assessment from the due date of the return until 30 days after the date upon which the Department issues a denial of the application.

¹ Exceptions include: a) the affiliate being in a foreign nation that is a signatory to a comprehensive income tax treaty with the United States; b) the affiliate, during the same tax year, having directly or indirectly paid such portion to an entity that is not an affiliate; and c) the affiliate being subject to a state’s income tax and computes the appropriate portion using the allocation or apportionment rules of that state. Refer to Form IE-N for more information and instructions on the exceptions or safe harbors.